

FILED 10/15/2020
ED
U.S. DISTRICT COURT
24-HOUR DEPOSITORY

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE**

Sensa Verogna, Plaintiff,)
v.) Case #: 1:20-cv-00536-SM
Twitter Inc., Defendant.)

**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S MOTION
TO STRIKE DEFENDANT'S MOTION TO DISMISS
COMPLAINT OR, ALTERNATIVELY, TRANSFER**

Motion and Memorandum

1. On May 4, 2020, plaintiff filed a complaint against defendant alleging violations of U.S.C. §1981 in Claim I, for violations of 42 U.S.C. § 2000a AND N.H.R.S.A 354-A:17 in Claim II and for violation of plaintiffs Constitutional Rights in Claim III. Complaint at Dkt. @ 1. On May 11, 2020, defendant was duly served the summons and complaint by a service processor to the agent of record for Twitter Inc., The Corporation Trust Company Corporation, Trust Center, 1209 Orange Street, Wilmington, DE 19801. (Dkt. @2). On May 18, 2020, plaintiff submitted Return of Service Executed as to Twitter Inc. by Plaintiff; and, with an Answer Follow up required by the court by June 1, 2020. (Dkt. @ 2). On June 1, 2020, Defendant filed a Motion to Dismiss Complaint or Alternatively Transfer to the court on June 1, 2020. (Dkt. @ 3), with both the Motion and the Memorandum in support submitted on behalf of Mr. Eck and Ms. Swartz, with no others person having filed on behalf of defendant.

2. Twitter's "Motion" to Dismiss Complaint or, Alternatively, Transfer and "Memorandum" in Support were submitted by attorneys Jonathan M. Eck, "Mr. Eck" with a NH bar # 17684, and Julie E. Schwartz. Esq. "Attorney Schwartz", with no bar affiliation listed and on behalf of Twitter Inc., the defendant.

3. Both the Motion and the Memorandum were submitted as illustrated below;

Respectfully submitted,
Twitter, Inc.
By its attorneys,

ORR & RENO, PROFESSIONAL ASSOCIATION
Dated: June 1, 2020 By: /s/ *Jonathan M. Eck*
Jonathan M. Eck, Esq. (NH Bar #17684)
45 S. Main Street, P.O. Box 3550
Concord, NH 03302
(603) 223-9100
jeck@orr-reno.com

Julie E. Schwartz, Esq. (*motion for pro hac vice admission to be filed*)
Perkins Coie LLP
3150 Porter Drive
Palo Alto, CA 94304-1212
(650) 838-4490
JSchwartz@perkinscoie.com

4. On June 4, 2020, the Plaintiff received and e-mail message from Mr. Eck stating that;

“Julie Schwartz, a California-barred attorney from the law firm Perkins Coie LLP, intends to file a motion for pro hac vice admission to the United States District Court for the District of New Hampshire.” And “will ask the Court to allow Attorney Schwartz to appear and practice before the District of New Hampshire so she can represent Twitter in active association with me.

See Attached, Exhibit A, Declaration in Support of this Motion and Memorandum of Law.

5. On June 4, 2020, though this e-mail, Mr. Eck indicates that Attorney Schwartz is and was not at the time of their filing the defendant's Motion and Memorandum, authorized to appear or practice before the First Federal District Court of New Hampshire. See Docket @7, attached Exhibit A.

6. On June 8, 2020, Attorney Schwartz forwarded to the court an AFFIDAVIT OF JULIE E. SCHWARTZ, being duly sworn and deposed, stated to the Court:

67 **"I, Julie E. Schwartz, am an attorney with the law firm of Perkins Coie LLP,**
68 **3150 Porter Drive, Palo Alto, CA 94304-1212, Telephone: (650) 838-4490. By**
69 **this Affidavit and the Motion to which it is attached, I seek admission pro hac**
70 **vice to represent the Defendant, Twitter, Inc., in this lawsuit."**

72 See attached Exhibit A, plaintiff's declaration in support.

74 7. It is apparent from this E-Mail message that Attorney Schwartz was not at the time
75 of the filing of the Motion and Memorandum, allowed to appear or practice law before this Court
76 and therefore any document filed prior to the entry of an order granting pro hac vice admission
77 should be stricken from the record.

78 Laws and Rules

80 8. Rule 12(f) of the Federal Rules of Civil Procedure, Title 28, United States Code
81 states;

83 **"(f) Motion to Strike. The court may strike from a pleading an insufficient**
84 **defense or any redundant, immaterial, impertinent, or scandalous matter. The**
85 **court may act:**

87 **(1) on its own; or**

89 **(2) on motion made by a party either before responding to the**
90 **pleading or, if a response is not allowed, within 21 days after being**
91 **served with the pleading"**

93 9. N.H. RSA 311:7 states;

95 **"Prohibition. – No person shall be permitted commonly to practice as an**
96 **attorney in court unless he has been admitted by the court and taken the oath**
97 **prescribed in RSA 311:6".**

99 10. N.H. RSA 311:2 states;

101 **"Admission to Practice. – Any citizen of the age of 18 years, of good moral**
102 **character and suitable qualifications, on application to the supreme court shall**
103 **be admitted to practice as an attorney."**

105 11. The New Hampshire Rules of Professional Conduct for Law Firms and
106 Associations Rule 5.5(a) states, in pertinent part;

108 **"A lawyer shall not practice law in a jurisdiction in violation of the regulation
109 of the legal profession in that jurisdiction or assist another in doing so."**

110 12. Comments on Rule 5.5, states, in pertinent part;

113 **"Unauthorized Practice of Law; Multijurisdictional Practice of Law [10]
114 Paragraph (c)(2) also provides that a lawyer rendering services in this
115 jurisdiction on a temporary basis does not violate this Rule when the lawyer
116 engages in conduct in anticipation of a proceeding or hearing in a jurisdiction
117 in which the lawyer is authorized to practice law or in which the lawyer
118 reasonably expects to be admitted pro hac vice."**

120 With examples of such conduct including meetings with the client, interviews of potential
121 witnesses, and the review of documents and not the filing of motions to the court.

122 Argument

123 13. When a statute is clear and unambiguous, this court will "give effect to the plain
124 and ordinary meaning of the words." Cromer v. Wilson, 126 Nev. 106, 109, 225 P.3d 788, 790
125 (2010)

126 14. "A corporation is not permitted to litigate in federal court unless it is represented
127 by a lawyer licensed to practice in that court". Udoinyion v. The Guardian Security, 2011 WL
128 3911087, *3 (11th Cir. Sept. 7, 2011) ("A corporation is an artificial entity that cannot appear pro
129 se and must be represented by counsel."). Palazzo v. Gulf Oil Corp., 764 F.2d 1381, 1385 (11th
130 Cir. 1985).

131 15. The defendant corporation, Twitter Inc., is not, and could not be, a member of the
132 bar of New Hampshire, whose members, under our rules, may be admitted to practice in this court.
133 It is obvious that defendant corporation could not plead and manage its case personally, as provided
134 in 28 USCA § 394, nor could it manage it through an agent of its appointment who is not an
135 attorney of the court. See Nightingale v. Oregon Cent. Ry. Co. (C. C. Or. 1873) 18 Fed. Cas. 239,
136 No. 10,264.

137 16. Attorney Schwartz, a California attorney, was not in her own words, at the time she
138 submitted the defendant's Motion and Memorandum, an active member in good standing of the
139 Supreme Court of New Hampshire which would have made her eligible for admission to the bar
140 of this Court. Local Rule 83.1 Bar of District Court (a).

141 17. Attorney Schwartz, a California attorney, was not in her own words, at the time she
142 submitted the defendant's Motion and Memorandum; 1) formally started the application procedure
143 for admission; 2) sought nor received this Courts approval to appear pro hac vice; 3) paid any fees;
144 4) taken any oath under Local Rule 83.1(b); 5) motioned this court for a special admission under
145 Local Rule 83.1(d).; 6) submitted any supporting affidavit or paid a fee as required by Local Rule
146 83.2., or; 7) motioned this Court for a limited appearance for preparing documents such as her
147 Motion and Memorandum and this Court has not granted any leave pursuant to Local Rule 83.7,
148 Limited Representation by Counsel. Davis v. Marcotte, 193 Ohio App.3d 102, 2011-Ohio1189,
149 951 N.E.2d 117, ¶8 (10th Dist.). Only after these two prerequisites are fulfilled may the out-of-
150 state attorney represent clients in court in New Hampshire.

151 18. Attorney Schwartz, an attorney admitted to practice in another state, but not
152 authorized to practice in New Hampshire, who counsels clients on New Hampshire law and drafts
153 legal documents for them and submits them to a New Hampshire Court without requesting and
154 being granted pro hac vice status before filing the Motion and Memorandum with the Court
155 engaged in the unauthorized and prohibited practice of law in New Hampshire as prohibited by
156 N.H. RSA 311:7, and for this Court to accept defendant's Motion and Memorandum submitted by
157 Attorney Schwartz would be tantamount to affixing an ex post facto imprimatur of approval of the
158 unauthorized and prohibited practice of law in violation of N.H. RSA 311:7. A lawyer admitted to
159 practice in another state, but not authorized to practice in New Hampshire, who counsels clients

160 on New Hampshire law and drafts legal documents for them and submits it to the Court is engaged
161 in the unauthorized practice of law in New Hampshire. See Cleveland Bar Assn. v. Moore, 87
162 Ohio St.3d 583, 584, 722 N.E.2d 514 (2000).

163 19. Plaintiff argues that Attorney Schwartz's submittal of the Motion and
164 Memorandum and the Motion and Memorandum itself, is scandalous as it is illegal to practice law
165 in any Court in this State unless prior procedures of admission have been followed and prior to
166 any submittal to the Court which is an unauthorized practice of law and illegal in the State of New
167 Hampshire. Plaintiff also argues that if this Court does not strike Attorney Swartz's Motion and
168 Memorandum that it would most certainly "detract from the dignity of the court." See 2A Moore's
169 Federal Practice ¶ 12.21 at p. 2426 (1983) (footnotes omitted). Skadegaard v. Farrell, 578 F. Supp.
170 1209 (D.N.J. 1984) US District Court for the District of New Jersey - 578 F. Supp. 1209 (D.N.J.
171 1984).

172 20. Fed.R.Civ.P. 12(f) "[U]pon the court's own initiative at any time, the court may
173 order stricken from any pleading any insufficient defense or any redundant, immaterial,
174 impertinent, or scandalous matter.". In Theriault v. Silber, 579 F.2d 302 (5th Cir.1978). A court
175 has considerable discretion in striking "any redundant, immaterial, impertinent or scandalous
176 matter." Fed.R.Civ.P. 12(f). See Abraham Alvarado-Morales v. Digital Equipment Corp. (1st Cir.
177 1988) Citations: 843 F.2d 613, quoting Boreri v. Fiat S.P.A., 763 F.2d 17, 23 (1st Cir.1985)
178 Scandalous matter that is unfit for our [court] files must be stricken. See Washington Post Co. v.
179 Chaloner 1746, 63 L. Ed. 987, 39 S. Ct. 448, 250 U.S. 290 (1919). While acknowledging that this
180 Court has considerable discretion under Fed.R.Civ.P. 12(f),, under the circumstances of this case,
181 this Court need not to use its discretion as it has already been resolved through N.H. RSA 311:7.

182 21. Motions to strike under Fed.R.Civ.P. 12(f) can be granted when it is beyond cavil
 183 that the defendant could not prevail on them." Honeywell Consumer Prods., Inc. v. Windmere
 184 Corp., 993 F. Supp. 22, 24 (D.Mass.1998) (Gorton, J.) (citations omitted). A plaintiff may prevail
 185 on a Rule 12(f) motion where "it clearly appears that the plaintiff would succeed despite any state
 186 of facts which could be proved in support of defense." FDIC v. Gladstone, 44 F. Supp. 2d 81, 85
 187 (D.Mass.1999) (citation omitted). USSEC v. Nothern (D. Mass. 2005) Citations: 400 F. Supp. 2d
 188 362. In this case, the illegality of Motion and Memorandum were instituted in violation of law,
 189 and any judgement resulting from such proceedings is void. Newburger v. Campbell, 9 Daly, (N.
 190 Y.) 102: Kaplan v. Berman, 75 N. Y. Supp. 1002.

191 22. In re Unauthorized Practice of Law, 175 Ohio St. 149, 192 N.E.2d 54 (1963),
 192 paragraph two of the syllabus states; "[T]he preparation and filing of a pleading in court is an act
 193 of advocacy which must be undertaken by an attorney admitted to the bar and licensed to practice
 194 law in this state." Washington Cty. Dept. of Human Serv. v. Rutter, 100 Ohio App.3d 32, 36, 651
 195 N.E.2d 1360 (4th Dist.1995).

196 23. In Applebaum, 231 Ill. 2d at 435., the court concluded "that when a person who is
 197 not licensed to practice law in Illinois attempts to represent a party in legal proceedings the nullity
 198 rule may be applied. The nullity rule is based upon the fact that there are risks to individual clients
 199 and to the integrity of the legal system inherent in representation by an unlicensed person.
 200 Applebaum v. Rush University Medical Center, 231 Ill. 2d 429, 435 (2008). Forty-six years later
 201 an Illinois court overruled the McLaughlin case, holding that such services rendered for another
 202 could not be rendered in a court of record without a license to practice law. People v. Hubbard,
 203 313 Ill. 346, 145 N. E. 93 (1924).

204 24. In Birbrower, Montalbano, Condon & Frank, P.C. v. Superior Court, 949 P.2d 1
205 (Ca. 1998), the California Supreme Court ruled that a New York law firm could not recover over
206 \$1 million in fees for its representation of a California corporation related to a dispute and
207 arbitration proceeding in California because the New York law firm had engaged in the un-
208 authorized practice of law in California. The court reasoned that the firm's activities in traveling
209 to California to discuss the matter with the client, negotiating a settlement, and initiating arbitration
210 proceedings in California constituted unauthorized law practice in California. The overwhelming
211 facts in this case demonstrate that Attorney Swartz engaged in unauthorized practice of law in New
212 Hampshire and in violation of N.H. RSA 311:7, prior to and when submitting the Motion and
213 Memorandum.

214 25. An Illinois Court has stated, "We begin by noting that this Court never before, in
215 any published opinion or order, has granted a pro hac vice request nunc pro tunc when to do so
216 "would be tantamount to affixing an ex post facto imprimatur of approval on what might under
217 some circumstances be construed as the unauthorized practice of law[,"] a criminal offense
218 prohibited by G.L.1956 § 11-27-5. *In re Church*, 111 R.I. 425, 427, 303 A.2d 758, 759 (1973). See
219 also *In re Olsen*, 112 R.I. 673, 674, 314 A.2d 140, 141 (1974). It is for that very reason that a
220 majority of this Court now issues this opinion and reiterates what it spoke of in both *In re Church*,
221 111 R.I. 425, 303 A.2d 758 (1973) and *In re Olsen*, 112 R.I. 673, 314 A.2d 140 (1974). *In re Steven*
222 E. Ferrey, 774 A.2d 62 (R.I. 2001) and further reasoned, "Our reason for declining his nunc pro
223 tunc request is because, as noted earlier, "[t]o do so would be tantamount to affixing an ex post
224 facto imprimatur of approval on what might under some circumstances be construed as the
225 unauthorized practice of law in violation of § 11-27-5." *In re Church*, 111 R.I. at 427, 303 A.2d at
226 759. See also *In re Olsen*, 112 R.I. at 674, 314 A.2d at 141. Thus, while Attorney Schwartz might

227 be excused for not being aware of our state laws, or rules governing a nonresident attorney's right
228 to practice before an "a Court in this State", this Court, on the other hand is presumed to know
229 what N.H. RSA 311:7 prohibits, and is duty bound to follow that law and not blindly ignore or
230 condone past transgressions thereof. Any rules or Laws governing a nonresident attorney's right
231 to practice before this Court is simply answered within the brief text of N.H. RSA 311:7.

232 26. It is beyond dispute that the judiciary has the power to control its courtrooms. See
233 State v. LaFrance, 124 N.H. 171, 179, 471 A.2d 340 (1983). "The power of the judiciary to
234 control its own proceedings, the conduct of participants, the actions of officers of the court and the
235 environment of the court is a power absolutely necessary for a court to function effectively and do
236 its job of administering justice." Id. at 179-80, 471 A.2d 340. The court found no error in the
237 court's decision to prohibit Mr. Kamasinski from sitting at counsel table, particularly in light of its
238 prior ruling that he was engaged in the unauthorized practice of law. The Court also held that the
239 court could reasonably have concluded that to permit Mr. Kamasinski to sit at counsel table could
240 have given the appearance of sanctioning the unauthorized practice of law. See Bilodeau v. Antal,
241 123 N.H. 39, 45, 455 A.2d 1037 (1983).

242 27. Thus, it is abundantly clear that since 1995, N.H. RSA 311:7, New Hampshire has
243 made unlawful the practice of law in this state by any attorney who is not a member of the New
244 Hampshire bar and who has not been given prior pro hac vice permission to practice in New
245 Hampshire, regardless of whether that attorney appears before any court. In re Steven E. Ferrey,
246 774 A.2d 62 (R.I. 2001). Attorney Schwartz's acts of preparing the Motion and Memorandum
247 constitutes the unauthorized practice of law. In Koscove v. Bolte, 30 P.3d 784 (Colo. Ct. App.
248 2001). Clearly, Attorney Swartz was not admitted to practice law in New Hampshire when she filed
249 the Motion to Dismiss. Therefore, the Motion to Dismiss is void ab initio. The trial court had no

250 discretion in ruling on the motion to dismiss the complaint. See Marken Real Estate and
251 Management Corp. v. Adams, 56 Ill. App. 3d 426, 429 (1977) (signing of complaint by non-
252 attorney constituted the unauthorized practice of law).

253 28. Attorney Schwartz's submittal of her Motion to Dismiss and Memorandum of law
254 in Support constitutes and unauthorized practice of law in the State of New Hampshire under
255 statute NH RSA 311:7 Prohibition. – No person shall be permitted commonly to practice as an
256 attorney in court unless he has been admitted by the court and taken the oath prescribed in NH
257 RSA 311:6, Model Act Providing Remedies for the Unauthorized Practice of Law. The Motion
258 and Memorandum are illegal and prohibited and therefore non-conforming and should be stricken
259 by the Clerk or Court as authorized under Local Rules 5.2 and Rule 77.2. and under Fed.R.Civ.P.
260 12(f).

261 29. If the Court were to deny plaintiff's motion it would be clearly prejudice the
262 plaintiff as any further Order, motion, reply or other defense to which would spawn from the
263 reliance on the Motion and Memorandum would clearly be prejudicial to the plaintiff. See Russo
264 v. Merck & Co., 138 F. *supra*, at 149 (D.R.I. 1956); 2A J. Moore & J. Lucas, *Moore's Federal*
265 *Practice* ¶ 12.21, at 2429-31 (2d ed. 1981); Amoco Oil v. LOCAL 99, INTERN. BROTH. OF
266 ELEC., ETC. 536 F. Supp. 1203 (D.R.I. 1982). If a judgment has been rendered, it is void and will
267 be reversed. Mullin-Johnson Co. v. Penn Mut. Life Ins. Co., 9 F. Supp. 175 (N.D. Cal. 1934) citing
268 Bennie v. Triangle Ranch Co., 73 Colo. 586, 216 Pac. 718

269

270 30. Upon information and belief, defendant is not an infant, incompetent, or presently
271 engaged in the military service.

273 Wherefore, plaintiff prays that this court strike Twitter, Inc's. submittal "TWITTER'S"
274 "MOTION" TO DISMISS COMPLAINT OR, ALTERNATIVELY, TRANSFER and the
275 "MEMORANDUM" OF LAW IN SUPPORT because it violates Local Rules 5.2 and Rule 77.2
276 and under Fed.R.Civ.P. 12(f) and would be prejudicial to the plaintiff and which would be
277 scandalous for this Court to accept and therefore would be an insufficient defense under Rule
278 12(f) of the Federal Rules of Civil Procedure, Title 28, United States Code, and therefore be
279 stricken from the record in its entirety.

280

281 Respectfully,

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285 
/s/ Plaintiff, Anonymously as Sensa Verogna
SensaVerogna@gmail.com

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287

288 **CERTIFICATE OF SERVICE**

289 I hereby certify that on this 15th day of June 2020, the foregoing document was made upon the
290 Defendant, through its attorneys of record to Jonathan M. Eck jeck@orr-reno.com and Julie E.
291 Schwartz, Esq., JSchwartz@perkinscoie.com.

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